



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Release Number: 201515036

Release Date: 4/10/2015

UIL Code: 501 09-00

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XXXXXXX

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(9).

We made this determination for the following reason(s):

Your membership is not voluntary as required under § 501(c)(9), and because your plan discriminates against non-faculty employees, you do not qualify for tax-exempt status as an organization described under § 501(c)(9).

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Tamera Ripperda  
Director, Exempt Organizations

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: June 4, 2014

Uniform Issue List  
501.09-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

Sponsor =  
Administrator =  
Company =  
Date =  
X =

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code (I.R.C.) § 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under § 501(c)(9). The basis for our conclusion is set forth below.

Facts:

You submitted a Form 1024 and applied for tax-exempt status as an organization described under § 501(c)(9). You represent the following facts.

You fund a welfare plan ("Plan") sponsored by Sponsor to provide retiree medical benefits excluding life insurance to benefit some of Sponsor's employees. You state that Plan is not a collective bargaining agreement plan.

Sponsor, an educational tax-exempt organization described under § 501(c)(3), created Plan to benefit only faculty employees of Sponsor hired after Date ("Participants"). Permanent full-time non-faculty employees hired after Date are excluded from participating in the Plan.

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Sponsor currently has 75 employees. Of the current employees:

- 7 are covered under Plan (2 employees are highly compensated employees ("HCE"))
- 10 are covered by a prior plan (3 employees are HCEs)

Of the remaining 58 employees who are not covered:

- 11 are collectively bargained employees
- 11 are part-time employees
- 5 are temporary employees
- 12 were hired prior to Date and not covered on that basis
- 19 were hired after Date and are excluded because they are not covered group (faculty)
- 6 of the 19 employees are HCEs.

Sponsor contributes \$x annually into each Participant's individual account. Participants do not contribute to their accounts. This amount increases 3% each year. Sponsor commenced these contributions after Date. "[I]nvestment accumulations are limited by the investment options in which the participant chooses to invest his or her account". Money in each Participant's account is invested in mutual funds and managed by your Trustee. Trustee is a low-cost provider of investment management and associated recordkeeping and trust services.

Plan will benefit Participants, Participants' spouses and their dependents upon a Participant's retirement or severance from Sponsor. Participants must satisfy the Retirement Eligibility to receive Plan benefits. Retirement Eligibility is defined as age 55 and 10 years of continuous employment with Sponsor or in the case of employees hired at an advanced age, age 65 with 5 years of continuous employment with Sponsor. Participants will be eligible for retiree health insurance upon enrolling in Medicare Part A and B. Participants who have not satisfied the Retirement Eligibility requirement, will only be eligible for the healthcare reimbursement benefit at age 55 upon severance from employment with Sponsor.

However, you will make available healthcare reimbursement benefit to Participants who are active employees of Sponsor that have certain terminal illness and catastrophic situations. To make certain this benefit is administered without discrimination, you use an objective criterion to determine who is terminally ill, reimburse a Participant's expenses incurred a year prior to the Participant's death because of a terminal illness or any time following the date a physician certifies a Participant is expected to die within five years.

Upon and during Participants' retirement, Plan will pay premiums for health insurance and reimburse Participants for qualified medical expenses from each Participant's account. You will devote Plan's entire assets to provide permissible health and welfare benefits under § 501(c)(9) to Participants. You do not envision that you will have assets with no Participant(s) participating in Plan. Nonetheless, you state that in the event of Plan's termination, "any assets remaining after the satisfaction of all liabilities and expenses of the Plan will be used to provide one or more benefits permitted under § 501(c)(9) to participants and their eligible spouses and dependents. No amounts will revert to the plan sponsor or any affiliated employer."

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Plan and Sponsor hired Administrator, a non-profit organization which is a consortium of its member institutions, to administer Plan. You also contracted Company to perform services that include receiving and processing qualified medical expenses, assisting eligible retirees who are enrolling in retiree health insurance. Company also operates a call-center and websites services, etc. on Plan's behalf. Prior to entering into the contracts with Administrator, Trustee and Company, Plan conducted extensive and competitive Request for Proposals to make certain fees Plan pays them are reasonable/market competitive.

Law:

Section 501(c)(9) exempts from tax administration voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 505(b)(1) provides that except as otherwise provided in this subsection, a plan meets the requirements of this subsection only if (a) each class of benefits under the plan is provided under a classification of employees which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated individuals, and (b) in the case of each class of benefits, such benefits do not discriminate in favor of employees who are highly compensated individuals.

Section 505(b)(2) provides that for purposes of § 505(b)(1), there may be excluded from consideration (a) employees who have not completed 3 years of service, (b) employees who have not attained age 21, (c) seasonal employees or less than half-time employees, employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and 1 or more employers which the Secretary finds to be a collective bargaining agreement if the class of benefits involved was the subject of good faith bargaining between such employee representatives and such employer or employers, and employees who are nonresident aliens and who receive no earned income (within the meaning of section

Treas. Reg. § 1.501(c)(9)-1 provides that an organization described in § 501(c)(9) must be (a) an association of employees; (b) an association whose membership must be voluntary; (c) an association whose purpose is to provide for the payment of life, sick, accident, or other benefits to its members or their dependents or designated beneficiaries, and substantially all of its operations are in furtherance of providing such benefits, and (d) an association whose net earnings does not inure, other than by payment of the benefits referred to in (c), to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(9)-2(a)(2) provides that eligibility for membership may be restricted by geographic proximity, or by objective conditions or limitations reasonably related to employment, such as a limitation to a reasonable classification of workers, a limitation based on a reasonable minimum period of service, a limitation based on maximum compensation, or a requirement that a member be employed on a full-time basis.

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Treas. Reg. § 1.501(c)(9)-2(a)(2) provides that eligibility for benefits may be restricted by objective conditions relating to the type or amount of benefits offered. Any objective criteria used to restrict eligibility for membership or benefits may not, however, be selected or administered in a manner that limits membership or benefits to officers, shareholders, or highly compensated employees of an employer contributing to or otherwise funding the employees' association. Similarly, eligibility for benefits may not be subject to conditions or limitations that have the effect of entitling officers, shareholders, or highly compensated employees of an employer contributing to or otherwise funding the employees' association to benefits that are disproportionate in relation to benefits to which other members of the association are entitled.

Treas. Reg. § 1.501(c)(9)-2(b)(2) provides that the term employee for VEBA membership means "an individual who became entitled to membership in the association by reason of being or having been an employee inclusive of an employee on leave of absence, works temporarily for another employer or as an independent contractor, or has been terminated by reason of retirement, disability or layoff.

Treas. Reg. § 1.501(c)(9)-2(c)(2) provides that membership in an association is voluntary if an affirmative act is required on the part of an employee for the employee to become a member rather than the designation as a member due to employee status. However, an association shall be considered voluntary although membership is required of all employees, provided that the employees do not incur a detriment (for example, in the form of deductions from pay) as the result of membership in the association.

#### Rationale:

An organization described under § 501(c)(9) must be (a) an association of employees; (b) an association whose membership must be voluntary; (c) an association whose purpose is to provide for the payment of life, sick, accident, or other benefits to its members or their dependents or designated beneficiaries, and substantially all of its operations are in furtherance of providing such benefits, and (d) an association whose net earnings does not inure, other than by payment of the benefits referred to in (c), to the benefit of any private shareholder or individual. See § 501(c)(9) and Treas. Reg. § 1.501(c)(9)-1.

Because Plan's membership is not voluntary, and because Plan discriminates against non-faculty employees, you do not qualify for tax-exempt status as an organization described under § 501(c)(9).

You state that you will provide benefits permitted under § 501(c)(9) only to faculty employees of Sponsor hired after Date. Plan excludes nineteen employees who were hired after Date from participating in Plan because they do not fall within the defined covered group (faculty employees). These nineteen non-faculty employees are neither temporary employees, part-time employees, covered under a separate similar plan, covered pursuant to collective bargained agreement, nor employees who are nonresident aliens.

An organization described under § 501(c)(9) must be (a) an association of employees. The term employee for VEBA membership means "an individual who became entitled to

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membership in the association by reason of being or having been an employee inclusive of an employee on leave of absence, works temporarily for another employer or as an independent contractor, or has been terminated by reason of retirement, disability or layoff. See Treas. Reg. § 1.501(c)(9)-2(b)(2). The nineteen non-faculty employees hired after Date that are excluded from participating qualify as employees as described under Treas. Reg. § 1.501(c)(9)-2(b)(2).

Treas. Reg. § 1.501(c)(9)-1 provides that an organization described under § 501(c)(9) among other requirement must be an association whose membership must be voluntary. Membership in an association is voluntary if an affirmative act is required on the part of an employee for the employee to become a member rather than the designation as a member due to employee status. However, an association shall be considered voluntary even though membership is required of all employees, provided that employees do not incur a detriment (e.g. deductions from pay) as the result of membership in the association. See Treas. Reg. § 1.501(c)(9)-2(c)(2).

Because Plan has excluded/barred non-faculty employees who qualify as employees under Treas. Reg. § 1.501(c)(9)-2(b)(2) from making a choice to either participate or not participate in Plan, Plan is not voluntary as provided under § 501(c)(9).

Next, § 505(b)(1) provides that except as otherwise provided in this subsection, a plan meets the requirements of this subsection only if (a) each class of benefits under the plan is provided under a classification of employees which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated individuals, and (b) in the case of each class of benefits, such benefits do not discriminate in favor of employees who are highly compensated individuals.

In addition, under § 505(b)(2), for purposes of § 505(b)(1), there may be excluded from consideration: (a) employees who have not completed 3 years of service, (b) employees who have not attained age 21, (c) seasonal employees or less than half-time employees, employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and 1 or more employers which the Secretary finds to be a collective bargaining agreement if the class of benefits involved was the subject of good faith bargaining between such employee representatives and such employer or employers, and employees who are nonresident aliens and who receive no earned income (within the meaning of section). See Treas. Reg. § 1.501(c)(9)-2(a)(2).

Under the Plan, you permit faculty employees hired after Date to participate in Plan but exclude from participation non-faculty employees hired after Date who are neither covered under a separate similar plan, covered pursuant to a collective bargained agreement, temporary employees, part-time employees, nor employees who are nonresident aliens. Based on these exclusions, you discriminate against these nineteen non-faculty employees. Thus, you are not in compliance with § 505(b)(1), and therefore cannot qualify for tax-exempt status as an organization described under § 501(c)(9).

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Conclusion:

Based on the foregoing, because you are discriminatory and also not voluntary as described, you do not qualify for tax-exempt status as an organization described under § 501(c)(9).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.



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Please send your protest statement, Form 2848 and any supporting documents to this address:

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XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
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You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Mary Jo Salins  
Acting Manager, EO Technical